

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 16-20576

Hon. Stephen J. Murphy, III

RANDY NIBUNGCO MONTANTE,

Defendant.

**PLEA**

BEFORE THE HONORABLE STEPHEN J. MURPHY, III  
United States District Judge  
Theodore Levin United States Courthouse  
231 West Lafayette Boulevard  
Detroit, Michigan 48226  
Wednesday, February 1, 2017

APPEARANCES:

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EXHIBITSIdentificationOfferedReceived

NONE

10:27 1 Detroit, Michigan

10:27 2 Wednesday, February 1, 2017

10:27 3 — — —

11:17 4 (Proceedings commenced at 11:17 a.m., all parties  
11:17 5 present)

11:17 6 THE CLERK: Court now calls Case No. 16-20576, United  
11:17 7 States of America versus Randy Montante.

11:17 8 Counsel, please state your appearances for the  
11:17 9 record.

11:17 10 MS. SMITH: Good morning, Your Honor. Maggie Smith  
11:17 11 appearing on behalf of the United States.

11:17 12 THE COURT: Good morning.

11:17 13 MR. SCHULMAN: Good morning, Your Honor, Sanford  
11:17 14 Schulman on behalf and with Randy Montante. His family is also  
11:17 15 present in the courtroom.

11:17 16 THE COURT: Okay. Welcome. And let me invite Mr.  
11:17 17 Schulman and Montante to step forward so that we can get  
11:17 18 started here.

11:17 19 I understand the parties arrived at an agreement and  
11:17 20 Mr. Montante is going to plead guilty to Count 1 if everything  
11:17 21 goes as expected today, correct?

11:17 22 MR. SCHULMAN: Yes, Your Honor. There was  
11:17 23 discussions about a plea as charged and we had some discussions  
11:18 24 about the Rule 11, and after discussing it with Mr. Montante,  
11:18 25 we had discussed whether there's any marginal benefit to him

11:18 1 but we -- he has come to the decision that the Rule 11 is  
11:18 2 appropriate and he's executed same.

11:18 3 THE COURT: Okay. Very good. I'm going to ask Mr.  
11:18 4 Parker to give an oath to Mr. Montante -- Montante since we're  
11:18 5 going to ask him questions about the facts of the case. Go  
11:18 6 ahead, Mr. Parker, please.

11:18 7 THE CLERK: Yes, sir, Judge. Please raise your right  
11:18 8 hand.

11:18 9 R A N D Y M O N T A N T E  
11:18 10 was thereupon called as a witness herein, and after being  
11:18 11 first duly sworn to tell the truth and nothing but the truth,  
11:18 12 testified on his oath as follows:

11:18 13 DEFENDANT MONTANTE: I do.

11:18 14 THE COURT: Okay. Thank you very much.

11:18 15 Now, Mr. Montante, you've been placed under oath, and  
11:18 16 as I mentioned, I'm going to ask you a number of questions  
11:18 17 about your Plea Agreement and the charge that the government  
11:18 18 has filed in the case. If you intentionally say something that  
11:18 19 you know is not true or if you try to mislead the Court during  
11:19 20 this proceeding, there are serious consequences that go with  
11:19 21 that and you may not get the credit you're entitled to for  
11:19 22 having truthfully pled guilty. So everything you say to me,  
11:19 23 it's important that you say it to the best of your knowledge  
11:19 24 and ability and truthfully. Do you understand all that?

11:19 25 DEFENDANT MONTANTE: Yes, Your Honor.

11:19 1 THE COURT: All right. What's your full name, sir?

11:19 2 DEFENDANT MONTANTE: Randy Nibungco Montante.

11:19 3 THE COURT: And where were you born?

11:19 4 DEFENDANT MONTANTE: Detroit, Michigan.

11:19 5 THE COURT: Okay. How old are you as you stand here  
11:19 6 today?

11:19 7 DEFENDANT MONTANTE: Twenty-four.

11:19 8 THE COURT: And how much schooling have you had?

11:19 9 DEFENDANT MONTANTE: Up to five years of college.

11:19 10 THE COURT: Okay. Very good. You obviously then  
11:19 11 read and write the English language?

11:19 12 DEFENDANT MONTANTE: Yes, sir.

11:19 13 THE COURT: And you understand everything I've asked  
11:19 14 you so far, correct?

11:19 15 DEFENDANT MONTANTE: Yes.

11:19 16 THE COURT: All right. If you have any problem  
11:19 17 understanding anything that I ask you, tell me and I'll explain  
11:19 18 or I'll repeat my question. If you need any time to consult  
11:19 19 with your attorney privately, tell me that and I'll give you  
11:19 20 that opportunity as well, okay?

11:19 21 DEFENDANT MONTANTE: Yes, Your Honor.

11:19 22 THE COURT: All right. Do you have any mental  
11:20 23 illness -- I shouldn't ask that. Have you been treated  
11:20 24 recently for any mental illness or addiction to any sort of  
11:20 25 narcotic drug?

11:20 1 DEFENDANT MONTANTE: No, Your Honor.

11:20 2 THE COURT: Are you under the influence of any drug  
11:20 3 today, any other medication or alcoholic beverage as you stand  
11:20 4 here in court?

11:20 5 DEFENDANT MONTANTE: No, Your Honor.

11:20 6 THE COURT: Are you alert, awake and clear-headed?

11:20 7 DEFENDANT MONTANTE: Yes, Your Honor.

11:20 8 THE COURT: All right. I will ask Mr. Schulman as  
11:20 9 well whether he knows of any negative information regarding Mr.  
11:20 10 Montante's competence to plead guilty at this time.

11:20 11 MR. SCHULMAN: I do not and I'm satisfied.

11:20 12 THE COURT: Okay. I find that the defendant is  
11:20 13 thinking clearly, he's not under the influence of any drugs or  
11:20 14 alcohol, and he is competent to offer a guilty plea at this  
11:20 15 time.

11:20 16 Now, Mr. Montante, you have the right to have an  
11:20 17 attorney represent you during all stages of these proceedings.  
11:20 18 The Court will appoint an attorney for you if you can't afford  
11:20 19 one yourself. Do you understand that right?

11:20 20 DEFENDANT MONTANTE: Yes, Your Honor.

11:20 21 THE COURT: Have you discussed your case completely  
11:20 22 with Mr. Schulman?

11:21 23 DEFENDANT MONTANTE: Yes, Your Honor.

11:21 24 THE COURT: Are you confident that you understand all  
11:21 25 the advice that he's given to you?

11:21 1 DEFENDANT MONTANTE: Yes, Your Honor.

11:21 2 THE COURT: Okay. You've listened carefully and  
11:21 3 considered what he's had to say and actually factors -- factors  
11:21 4 his advice into your -- factored his advice into your decision  
11:21 5 to plead guilty, correct?

11:21 6 DEFENDANT MONTANTE: Yes, Your Honor.

11:21 7 THE COURT: All right. Now, knowing all that, it's  
11:21 8 your decision to go forward with your plea, not that of Mr.  
11:21 9 Schulman, your attorney, or anybody else because you think it's  
11:21 10 your best decision in this case, correct?

11:21 11 DEFENDANT MONTANTE: Yes, Your Honor.

11:21 12 THE COURT: Are you going forward and pleading  
11:21 13 guilty, at least in part, because you're actually guilty of  
11:21 14 this crime of Production of Child Pornography that you intend  
11:21 15 to admit?

11:21 16 DEFENDANT MONTANTE: I am, Your Honor.

11:21 17 THE COURT: All right. If I accept your plea today,  
11:21 18 you'll be convicted of that crime and you won't have a trial in  
11:21 19 this courtroom. Do you understand that?

11:21 20 DEFENDANT MONTANTE: Yes, Your Honor.

11:21 21 THE COURT: There are constitutional rights that you  
11:21 22 would have if you had a trial but you give them up permanently  
11:21 23 in this case by pleading guilty. I have to make sure you  
11:22 24 understand the rights you're giving up. I'll list the rights  
11:22 25 you're giving up by pleading guilty and then ask you if you

11:22 1 understand them, so listen carefully, okay? All right.

11:22 2 First of all, you give up the right to plead not  
11:22 3 guilty and to have a trial by jury with a lawyer assisting you.

11:22 4 You give up the right to be presumed innocent and the  
11:22 5 right to have the government prove beyond a reasonable doubt  
11:22 6 that you are guilty.

11:22 7 You give up the right to watch and to listen as  
11:22 8 witnesses against you testify and the right to question or  
11:22 9 challenge those witnesses.

11:22 10 You give up the right to have the Court order  
11:22 11 witnesses you may have in your defense come to court and to  
11:22 12 give testimony if you want to present a case.

11:22 13 You have the right to decide not to testify or not to  
11:22 14 put on evidence and those facts can't be used against you in  
11:22 15 your trial.

11:22 16 And finally, your Rule 11 Plea Agreement says that if  
11:22 17 I sentence you generally in the way that the lawyers  
11:22 18 recommended or estimated the sentence in the agreement, then  
11:23 19 you will give up your right to appeal your conviction and your  
11:23 20 sentence based on the plea.

11:23 21 Now, your decision to plead guilty here this morning  
11:23 22 means that all those rights I just went over with you will be  
11:23 23 given up permanently in this case. Do you understand all those  
11:23 24 rights that I just explained?

11:23 25 DEFENDANT MONTANTE: Yes, Your Honor.



11:23 1 THE COURT: Okay. All right. Have you received a  
11:23 2 copy of this indictment which charges you I believe in four  
11:23 3 counts?

11:23 4 DEFENDANT MONTANTE: I have, Your Honor.

11:23 5 THE COURT: All right. With regard to Count 1, and  
11:23 6 that's the production charge I mentioned that you intend to  
11:23 7 plead guilty to, there are a number of elements that the  
11:23 8 government must prove or show before you can be convicted of  
11:23 9 the crime.

11:23 10 They have to show that you knowingly attempted to  
11:23 11 persuade, use, entice or coerce a minor to engage in sexually  
11:23 12 explicit conduct or activity.

11:24 13 They have to show that the purpose of the conduct was  
11:24 14 to produce a visual depiction of the -- or a video or a  
11:24 15 picture, whatever the case may be, of the sexually explicit  
11:24 16 activity.

11:24 17 And then they have to show that the materials that  
11:24 18 were used to produce the visual depiction, the camera,  
11:24 19 computer, whatever the case may be, had been mailed, shipped or  
11:24 20 transported in or affected interstate commerce.

11:24 21 Until and unless the government proves those  
11:24 22 elements, you cannot be convicted of those crimes. Do you  
11:24 23 understand those are the elements of the crime the government  
11:24 24 is required to prove?

11:24 25 DEFENDANT MONTANTE: Yes, Your Honor.

11:24 1 THE COURT: All right. The maximum penalty for a  
11:24 2 person who violates this law is up to 30 years in prison.  
11:24 3 There is a minimum mandatory penalty for this conduct that the  
11:24 4 Congress has stated of 15 years imprisonment. You could be  
11:24 5 fined as much as \$250,000 and there is a \$100 special  
11:25 6 assessment on each count of conviction that you have to pay.  
11:25 7 Those are the possible maximum and minimum terms of this  
11:25 8 statute that you expose yourself by pleading guilty to it. Do  
11:25 9 you understand that?

11:25 10 DEFENDANT MONTANTE: Yes, Your Honor.

11:25 11 THE COURT: If you go to prison in the case, it looks  
11:25 12 like you will have a prison term since there's a minimum  
11:25 13 mandatory on it, you'll also be what's sentenced to a term of  
11:25 14 supervised release. In fact, there's a minimum term of five  
11:25 15 years of supervised release which says once you're finished  
11:25 16 with your sentence in the case, the probation office will  
11:25 17 supervise your reentry, and if you violate a condition of their  
11:25 18 supervision, you could be penalized for that conduct and go  
11:25 19 back to prison for additional time even though you've already  
11:25 20 served the entire sentence for the crime you're admitting to  
11:25 21 here today. Do you understand that?

11:26 22 DEFENDANT MONTANTE: Yes, Your Honor.

11:26 23 THE COURT: All right. There is the possibility, I  
11:26 24 don't know if the government will ask for it, but there's the  
11:26 25 possibility you might have to pay restitution to any victim of

11:26 1 your conduct. You might also be required to forfeit certain  
11:26 2 property such as the materials that were used to commit the  
11:26 3 crime or any proceeds of it. Those could be parts of the  
11:26 4 sentence that I impose in this case as well. Do you understand  
11:26 5 that?

11:26 6 DEFENDANT MONTANTE: Yes, Your Honor.

11:26 7 THE COURT: All right. Sentences in federal court  
11:26 8 are governed by federal law. That includes the U.S. Sentencing  
11:26 9 Guidelines. Under the law, it's the job of the Court, not the  
11:26 10 defense attorney, the prosecutor or the probation officer, to  
11:26 11 make final decisions about the sentence and then to impose it.  
11:26 12 My decision about the sentence in this case will be governed in  
11:26 13 part by the sentencing guideline score. That combines the  
11:27 14 seriousness of your offense with any criminal background you  
11:27 15 might have and it results in a range of suggested sentences.  
11:27 16 Now, my decision about the sentencing range may be the same  
11:27 17 that the lawyers have made in the Plea Agreement but it might  
11:27 18 be different. I might find that a higher or a lower sentencing  
11:27 19 range applies to this case. Do you understand that?

11:27 20 DEFENDANT MONTANTE: Yes, Your Honor.

11:27 21 THE COURT: Do you understand that if the government  
11:27 22 makes a recommendation about your sentence, I'm not required to  
11:27 23 accept it; I could go higher or lower than what the government  
11:27 24 urges me to sentence in this case. Do you understand that?

11:27 25 DEFENDANT MONTANTE: Yes, Your Honor.

11:27 1 THE COURT: Finally, the sentence guidelines that I  
11:27 2 mentioned earlier are not mandatory, they are advisory to  
11:27 3 federal courts. What governs sentences is -- are the factors  
11:27 4 laid out in a statute known as 18 USC, Section 3553(a), and the  
11:28 5 reasons for the sentence have to comply with that law.

11:28 6 Now, if I find a guideline range applies to the case  
11:28 7 and I want to vary from it based on the factors laid out in  
11:28 8 that sentence, I can find reasons like the nature and the  
11:28 9 circumstances of the offense, the need for the sentence to  
11:28 10 reflect the seriousness of the offense, to promote respect for  
11:28 11 the law and things of that nature to do so.

11:28 12 Now, I could never go higher than the maximum term  
11:28 13 that I provided earlier, but I could vary from the ultimate  
11:28 14 sentence guideline range based on the statutory factors I just  
11:28 15 mentioned. Do you understand all that?

11:28 16 DEFENDANT MONTANTE: Yes, Your Honor.

11:28 17 THE COURT: All right. Parole has been abolished in  
11:28 18 federal courts and if you're sentenced to prison in this case,  
11:28 19 you won't be released on parole. Do you understand that?

11:28 20 DEFENDANT MONTANTE: Yes, Your Honor.

11:28 21 THE COURT: All right. Your plea of guilt today, Mr.  
11:28 22 Montante, is the result of discussions between your lawyer, Mr.  
11:29 23 Schulman, and Ms. Smith who appears on behalf of the United  
11:29 24 States. I haven't been involved in those discussions, I  
11:29 25 haven't approved of your Plea Agreement in advance, and I

11:29 1 haven't predicted any certain sentence in this case. Do you  
11:29 2 understand all that?

11:29 3 DEFENDANT MONTANTE: Yes, Your Honor.

11:29 4 THE COURT: Have you had an opportunity to fully read  
11:29 5 over and discuss this Plea Agreement with Mr. Schulman before  
11:29 6 you signed it in the courtroom here today?

11:29 7 DEFENDANT MONTANTE: Yes, Your Honor.

11:29 8 THE COURT: All right. Ms. Smith, if you would  
11:29 9 summarize just the most important terms of the Plea Agreement  
11:29 10 for the record at this time, we'd be grateful.

11:29 11 MS. SMITH: Thank you, Your Honor.

11:29 12 Today the defendant will plead guilty to Count 1 of  
11:29 13 the indictment which charges Production of Child Pornography.

11:29 14 There are no sentencing guideline disputes. The  
11:29 15 defendant's guideline range has been calculated by the parties  
11:29 16 to be 262 to 327 months.

11:29 17 The government will make a non-binding recommendation  
11:29 18 that the sentence of imprisonment be no more than the high end  
11:29 19 of the sentencing guideline range as it is calculated by the  
11:30 20 terms in the Rule 11 Plea Agreement.

11:30 21 A term of supervised release will follow the term of  
11:30 22 imprisonment. There is no agreement, but it must be at least  
11:30 23 five years and it could be up to life.

11:30 24 The defendant will pay a special assessment of \$5,000  
11:30 25 pursuant to the Justice For Victims of Trafficking Act of 2015.

11:30 1 The Court shall order restitution to every  
11:30 2 identifiable victim of the defendant's offense.

11:30 3 The defendant understands that by pleading guilty  
11:30 4 today, he will be required to register as a sex offender under  
11:30 5 both federal and state registration requirements.

11:30 6 If the Court accepts this agreement, at sentencing  
11:30 7 the government will move to dismiss the remaining charges in  
11:30 8 the indictment.

11:30 9 The defendant will waive any right he may have to  
11:30 10 appeal his conviction, and if the sentence does not exceed the  
11:30 11 maximum allowed by Part 3 of this agreement, he also waives any  
11:30 12 right he may have to appeal his sentence.

11:30 13 And, Your Honor, those are the salient terms of the  
11:31 14 Rule 11 Plea Agreement.

11:31 15 THE COURT: Okay. Thank you, Ms. Smith.

11:31 16 Mr. Schulman, do you agree with the summary of the  
11:31 17 guilty plea agreement that the AUSA just gave?

11:31 18 MR. SCHULMAN: I do, Your Honor. I just want to  
11:31 19 point out two other points so that Mr. Montante will hear that.  
11:31 20 The elements of the offense as stated in the Rule 11 would not  
11:31 21 require any knowledge of the age of the minor or the fact that  
11:31 22 the individual was a minor, and so we stipulate to those  
11:31 23 elements.

11:31 24 And that while there's a advisory guideline range, I  
11:31 25 want him to understand -- and he has asked that I submit a

11:31 1 sentencing memorandum advocating for the lowest end of the  
11:31 2 potential -- a possible sentence, which would still be the  
11:31 3 mandatory 180 months. And I've explained to him that this  
11:31 4 Court is certainly not in a position to make any of those  
11:31 5 decisions today, as you have already articulated to him, but I  
11:31 6 just wanted him to understand that those guidelines are  
11:31 7 advisory and both the defendant and the government can submit  
11:32 8 pleadings to advocate for their positions and we hope to do  
11:32 9 that.

11:32 10 We have had a psycho -- psychosexual -- a evaluation  
11:32 11 done, we've provided that to the government, and I was going to  
11:32 12 ask the Court to consider allowing the defense to submit that  
11:32 13 under seal at the time of sentencing.

11:32 14 THE COURT: Yeah. Okay. First of all -- okay. You  
11:32 15 said, if I'm not mistaken, that you agreed with the summary  
11:32 16 that Ms. Smith gave of the Plea Agreement, right?

11:32 17 DEFENDANT MONTANTE: Yes.

11:32 18 THE COURT: All right. Secondly, you are saying that  
11:32 19 you agree and understand on behalf of your client that the  
11:32 20 guideline range in the case is 262 to 327 months, but that if  
11:32 21 in your judgment as an advocate you think a sentence lower than  
11:32 22 that on a variance from that range based on the statutory  
11:32 23 factors I mentioned might lie, you will file a memorandum and  
11:32 24 argue for that sentence, right?

11:33 25 MR. SCHULMAN: Yes.

11:33 1 THE COURT: And then finally, you are saying that  
11:33 2 there is a report of a professional which you want to submit to  
11:33 3 the Court under seal so that I can read it, and you'll send a  
11:33 4 copy of that to Ms. Smith confidentially as well, so that we  
11:33 5 can make that part of the record of the case at sentencing when  
11:33 6 we -- when we go to impose the term. Is that correct as well?

11:33 7 MR. SCHULMAN: Yes. I've already sent it to the  
11:33 8 government.

11:33 9 THE COURT: All right. Okay. All right. Now, with  
11:33 10 all that in mind, do you believe that pursuing this agreement  
11:33 11 is in your client's best interests?

11:33 12 MR. SCHULMAN: Yes.

11:33 13 THE COURT: All right. Mr. Montante, do you agree  
11:33 14 with the statements in the Guilty Plea Agreement that the  
11:33 15 prosecutor made as well as the colloquy I just had here with  
11:33 16 your lawyer about what he intends to do in the case?

11:33 17 DEFENDANT MONTANTE: Yes, Your Honor.

11:33 18 THE COURT: All right. And are you confident that  
11:33 19 your attorney fully explained this entire agreement and all  
11:33 20 these terms to you before you signed the Plea Agreement here in  
11:33 21 court today?

11:33 22 DEFENDANT MONTANTE: Yes, Your Honor.

11:34 23 THE COURT: All right. And you want to go forward  
11:34 24 and live by the terms of the agreement, correct?

11:34 25 DEFENDANT MONTANTE: Yes.



11:34 1 THE COURT: All right. Now, again, there's no  
11:34 2 certainty about the sentence at this point. The government is  
11:34 3 recommending a 262 to 360-month term. I will con -- and your  
11:34 4 lawyer believes there may be grounds to argue for a lower  
11:34 5 sentence. My mistake, 262 to 327 months.

11:34 6 I can't guarantee anything about the sentence today.  
11:34 7 I will carefully consider the government's recommendation and  
11:34 8 I'll also look at what your lawyer has to say, but I'll only do  
11:34 9 what the lawyers say if I think it's -- it's proper. But  
11:34 10 whatever sentence I give in the case, you won't be allowed to  
11:34 11 back out of your plea. This is a permanent decision to accept  
11:34 12 responsibility and plead guilty here today. Do you understand  
11:34 13 that?

11:34 14 DEFENDANT MONTANTE: Yes, Your Honor.

11:34 15 THE COURT: Okay. All right. Has anyone tried to  
11:34 16 force you or to threaten you in any way to get you to plead  
11:35 17 guilty?

11:35 18 DEFENDANT MONTANTE: No, Your Honor.

11:35 19 THE COURT: Has anybody done anything that you think  
11:35 20 is improper, illegal or unethical to get you to plead guilty?

11:35 21 DEFENDANT MONTANTE: No, Your Honor.

11:35 22 THE COURT: And except for what's already been stated  
11:35 23 here in open court or what's in this Plea Agreement that you  
11:35 24 signed, are there any other promises or deals that have been  
11:35 25 made to get you to plead guilty?

11:35 1 DEFENDANT MONTANTE: No, Your Honor.

11:35 2 THE COURT: All right. Then let's talk about this  
11:35 3 Count 1 of the indictment, Production of Child Pornography.  
11:35 4 How do you wish to plead to that count at this time?

11:35 5 DEFENDANT MONTANTE: Um, guilty.

11:35 6 THE COURT: All right. What did you do to make  
11:35 7 yourself guilty of Production of Child Pornography, what is the  
11:35 8 factual basis for your plea?

11:35 9 DEFENDANT MONTANTE: I met a woman on the social  
11:35 10 media, a random chat adult site, Omegle. She presented herself  
11:35 11 as age 18 and we exchanged social media accounts; Twitter,  
11:36 12 things along that nature. We had a -- we had a I think -- I  
11:36 13 suppose you could say relationship over six months, and then  
11:36 14 the last two have lead -- it was centered on Skype, yeah. In  
11:36 15 the last month I was apprised of her age and it wasn't what she  
11:36 16 had initially put forth and I still requested images and video  
11:36 17 of sensitive content.

11:36 18 THE COURT: Yeah. Okay.

11:36 19 DEFENDANT MONTANTE: I know against my better  
11:36 20 judgment that it was a big mistake and I deeply regret it. I  
11:36 21 didn't intend to hurt anybody and I'm sorry.

11:36 22 THE COURT: Okay. Thank you for those words.

11:36 23 Now, let me -- let me ask you a couple of questions  
11:37 24 just to get some certainty about what you did, and I think  
11:37 25 that's a pretty thorough factual basis that you lodged there.

11:37 1 But this behavior and conduct that you just spoke of took place  
11:37 2 starting February of 2016 and then the last con -- con --  
11:37 3 contact was around August of 2016, is that correct?

11:37 4 DEFENDANT MONTANTE: Yes, Your Honor.

11:37 5 THE COURT: All right. Now, this Skyping and  
11:37 6 computer contact that you had, were you at your home in Troy,  
11:37 7 Michigan when you did that?

11:37 8 DEFENDANT MONTANTE: Dearborn.

11:37 9 THE COURT: Dearborn, Michigan. Okay. All right.

11:37 10 So you basically said this, but I want to make sure I  
11:37 11 track the language. You knowingly persuaded this person who  
11:37 12 you met online to engage in content that was sexual and to --  
11:37 13 to send a visual depiction, a tape, a video, a Skype, whatever,  
11:38 14 to you doing that online, correct, you persuaded her to do  
11:38 15 that, is that what you said before?

11:38 16 DEFENDANT MONTANTE: Yes, but I never had any  
11:38 17 physical contact nor intended to.

11:38 18 THE COURT: Understood. And I take it that Mr.  
11:38 19 Schulman is willing to state on your behalf that the materials,  
11:38 20 which is to say the computers, the Skype, whatever the case may  
11:38 21 be, had been shipped or transported across state lines or in  
11:38 22 foreign commerce. Is that correct as well?

11:38 23 MR. SCHULMAN: So stipulated, Your Honor.

11:38 24 THE COURT: All right. With all that in mind, does  
11:38 25 the prosecutor have any additional questions to help establish

11:38 1 the factual basis for the plea?

11:38 2 MS. SMITH: I just have one question, Your Honor, and  
11:38 3 that is -- if I may ask the defendant.

11:38 4 THE COURT: Yep.

11:38 5 MS. SMITH: Mr. Montante, do you understand, and for  
11:38 6 the record, that the identity of minor victim 1 to be a  
11:38 7 specific female born in 2002?

11:39 8 DEFENDANT MONTANTE: Yes, Your Honor.

11:39 9 MS. SMITH: I'm satisfied.

11:39 10 DEFENDANT MONTANTE: Or Ms. Smith.

11:39 11 MS. SMITH: I'm satisfied, Your Honor.

11:39 12 THE COURT: All right. Okay. Are you satisfied  
11:39 13 indeed that there's a proper factual basis for the plea and  
11:39 14 that the Court has fully complied with Rule 11?

11:39 15 MS. SMITH: Yes, Your Honor.

11:39 16 THE COURT: Same question for Mr. Schulman.

11:39 17 MR. SCHULMAN: Defense is satisfied.

11:39 18 THE COURT: Okay. Mr. Montante, I find that your  
11:39 19 proposed guilty plea here today is supported by facts, you know  
11:39 20 what you're doing, you're acting competently and voluntarily in  
11:39 21 giving up your rights. I'm prepared to accept your plea of  
11:39 22 guilt, but let me ask you one final time, are you certain you  
11:39 23 want me to accept your guilty plea in open court here today?

11:39 24 DEFENDANT MONTANTE: Yes, Your Honor.

11:39 25 THE COURT: All right. I accept the defendant's plea

11:39 1 of guilt to Count 1 of the indictment. I find him guilty of  
11:39 2 the offense that's expressed in that count.

11:39 3 The defendant, Mr. Mon -- Mr. Montante, will be  
11:39 4 referred to the Probation Department for the preparation of a  
11:39 5 Pre-Sentence Report. Mr. Schulman and Ms. Smith may both file  
11:39 6 objections to the Pre-Sentence Report in advance of the day of  
11:40 7 sentencing.

11:40 8 And when we have sentencing, we'll have a hearing at  
11:40 9 which Mr. Montante and his lawyer will both have an opportunity  
11:40 10 to speak on Mr. Montante's behalf.

11:40 11 There are victims of the offense, it appears there  
11:40 12 are. They'll have the opportunity to be heard that day and  
11:40 13 time as well.

11:40 14 Mr. Schulman, Mr. Parker will give you a form which  
11:40 15 will refer you officially to the Probation Department so that  
11:40 16 you and your client can sit down and talk to them as early as  
11:40 17 today to begin the debriefing process for the probation  
11:40 18 officer's report.

11:40 19 MR. SCHULMAN: Your Honor, we have already scheduled  
11:40 20 that meeting today.

11:40 21 THE COURT: Oh, you have. All right. Very good.  
11:40 22 Grateful for that work.

11:40 23 We are going to have sentencing in this Court on  
11:40 24 May 5, that's a Friday, 10:00 a.m. in this courtroom.  
11:40 25 Everybody will be required to appear for sentencing at that

11:40 1 time.

11:40 2 Mr. Montante is in detention of the federal marshal,  
11:41 3 and we will remand him to their care and custody until that  
11:41 4 time.

11:41 5 Mr. Montante, I would ask you to simply continue your  
11:41 6 good efforts, be very compliant with the probation office so I  
11:41 7 can get an idea of what this crime involved and why -- what  
11:41 8 might have motivated you to do it.

11:41 9 We will see everybody in about three months' time on  
11:41 10 the 5th of May.

11:41 11 And there's nothing else from the Court unless  
11:41 12 there's anything else from either of the lawyers. Ms. Smith?

11:41 13 MS. SMITH: No, Your Honor.

11:41 14 THE COURT: Mr. Schulman?

11:41 15 MR. SCHULMAN: Yes, Your Honor. Mr. Montante has  
11:41 16 asked if the Court could recommend he be moved to Milan. I  
11:41 17 just want the Court to be aware he's been in Sandusky, Michigan  
11:41 18 at the Sanilac County Jail for about five months, which means  
11:41 19 four hours of driving for his lawyers and family. And he has  
11:41 20 filed no motions regarding revocation of his order of  
11:41 21 detention.

11:41 22 THE COURT: Right.

11:41 23 MR. SCHULMAN: And while I understand it's a  
11:42 24 recommendation, in this particular case he's been fully  
11:42 25 compliant with me, but this is the time that we need to prepare

11:42 1 sentencing memorandums. And I told him that I would reserve  
11:42 2 this request until after the plea. His family is of modest  
11:42 3 means and the transportation has been a hardship, and I -- I  
11:42 4 just ask the Court to consider that in light of the fact that  
11:42 5 it is a recommendation.

11:42 6 THE COURT: Are there med -- medical issues by any  
11:42 7 chance, is there anything?

11:42 8 MR. SCHULMAN: There was initially some issues  
11:42 9 regarding his eyesight and other issues. But I told him that,  
11:42 10 you know, obviously every county jail has some capacity to deal  
11:42 11 with his issues, both psychological issues, emotional issues  
11:42 12 and physical issues, and they do a minimal job at best but  
11:42 13 sufficient at least for him.

11:42 14 Milan has a lot of opportunities. He's well educated  
11:42 15 and it would also give him an opportunity to work in a library,  
11:42 16 work in a kitchen. And like I said, for five months we've not  
11:42 17 made that request and I think it's reasonable.

11:42 18 THE COURT: All right. Well, it is reasonable but  
11:42 19 I'll -- I'll tell you this. The housing decisions are  
11:43 20 administrative ones that are made by the federal marshal that I  
11:43 21 have very little control over and must defer to.

11:43 22 So I would say the following, which is if you present  
11:43 23 your reasoning to the federal marshal, I -- I would tell you  
11:43 24 that I would certainly endorse the housing of Mr. Montante  
11:43 25 between now and sentencing at the federal detention center

11:43 1 in -- in Milan for the reasons you say, but ultimately the  
11:43 2 decision is going to be -- going to be up to them and -- and  
11:43 3 it's something I have, again, very little input on. But your  
11:43 4 request in my view is reasonable and I would, you know, endorse  
11:43 5 what you want to do for your client for the reasons you say.

11:43 6 MR. SCHULMAN: Thank you.

11:43 7 THE COURT: All right. And the marshals are in the  
11:43 8 courtroom so they can do what they want with that, all right?

11:43 9 MR. SCHULMAN: Thank you.

11:43 10 THE COURT: Okay. We'll be finished at this point  
11:43 11 and we'll be in recess. Thank you all very much.

11:44 12 THE CLERK: All rise. Court is in recess.

13 (Court in recess at 11:44 a.m.)

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C E R T I F I C A T I O N

I, Linda M. Cavanagh, Official Court Reporter of the United States District Court, Eastern District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing pages 1 through 24 comprise a full, true and correct transcript of the proceedings held in the matter of United States of America vs. Randy Nibungco Montante, Case No. 16-20576, on Wednesday, February 1, 2017.

s/Linda M. Cavanagh  
Linda M. Cavanagh, RMR, RDR, CRR, CRC  
Federal Official Court Reporter  
United States District Court  
Eastern District of Michigan

Date: October 20, 2017  
Detroit, Michigan